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BEFORE THE ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION  
DOCUMENT CONTROL

WILLIAM A. MUNDELL  
Chairman  
JIM IRVIN  
Commissioner  
MARC SPITZER  
Commissioner

In the matter of:

EASY MONEY AUTO LEASING, INC.  
10243 N. Scottsdale Rd., Suite 5  
Scottsdale, Arizona 85253

SUPERIOR FINANCIAL SERVICES, INC.  
2102 E. Sharon Dr.  
Phoenix, Arizona 85022

JAMES ANTHONY CICERELLI  
13027 N. Surrey Circle  
Phoenix, Arizona 85029

DAVID PAUL FRENCH  
2102 E. Sharon Dr.  
Phoenix, Arizona 85022

Respondents.

DOCKET NO. S-03415A-01-0000

MOTION TO ALLOW  
TELEPHONIC TESTIMONY

Arizona Corporation Commission

DOCKETED

SEP 14 2001

DOCKETED BY

*mac*

The Securities Division ("Division") of the Arizona Corporation Commission hereby moves for leave to present the telephonic testimony of prospective Division witness Margaret Peirson during the hearing of the above-referenced matter, scheduled to begin on October 1, 2001. This Motion is supported

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1  
2 by the attached Memorandum of Points and Authorities.

3 RESPECTFULLY submitted this 14th day of September, 2001.

4 JANET NAPOLITANO  
5 Attorney General  
6 Consumer Protection & Advocacy Section

7 BY: 

8 MARK DINELL  
9 Special Assistant Attorney General  
10 MOIRA A. MCCARTHY  
11 Assistant Attorney General  
12 Attorneys for the Securities Division of  
13 The Arizona Corporation Commission  
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## MEMORANDUM OF POINTS AND AUTHORITIES

### I.

#### FACTS

The Division anticipates calling Margaret Peirson as a witness in this hearing. Ms. Peirson, a 76-year-old investor with Easy Money and Superior Financial Services, can provide probative testimony as to several of the Division's allegations in this case. Specifically, Ms. Peirson may testify as to the circumstances surrounding Respondents' offer and sale of various notes as well as her subsequent experiences with these investments. Because Ms. Peirson resides in Maryland, due to personal scheduling and other time constraints, the Division requests that she be allowed to testify telephonically. Additionally, travel to Arizona to attend the hearing as a witness would be unduly burdensome and costly, particularly given the restrictions on airline travel at this time.

### II.

#### ARGUMENT

The purpose of administrative proceedings is to provide for the fair, speedy and cost effective resolution of administratively justiciable matters. To effectuate that purpose, the legislature provided for streamlined proceedings and relaxed application of the formal rules of evidence. Specifically, A.R.S. § 41-1062(A)(1) provides for informality in the conduct of contested administrative cases. The evidence submitted in an administrative hearing need not rise to the level of formality required in a judicial proceeding, as long as it is "substantial, reliable and probative." In addition, the Commission promulgated rules of practice and procedure to ensure just and speedy determination of all matters presented to it for consideration. *See, e.g.*, A.A.C. R14-3-101(B); R14-3-109(K). Allowing Ms. Peirson to testify by telephone retains all indicia of reliability and preserves Respondents' right to cross-examination.

1 Courts in other states have acknowledged that telephonic testimony in administrative and civil  
2 proceedings is permissible and consistent with the requirements of procedural due process. *See*  
3 *Babcock v. Employment Division*, 72 Or. App. 486, 696 P.2d 19 (1985) (court approved Oregon  
4 Employment Division's procedure to conduct entire hearing telephonically); *W.J.C. v. County of*  
5 *Vilas*, 124 Wis. 2d 238, 369 N.W. 2d 162 (1985) (court permitted telephonic expert testimony in  
6 commitment hearing). Both of these courts concluded that fundamental fairness weighed in favor of  
7 permitting telephonic testimony.

8 Public policy considerations also militate towards allowing Ms. Peirson to testify  
9 telephonically. Through this form of testimony, the Division can better allocate its limited resources  
10 to better serve and protect the Arizona investing public.

11  
12 **III.**

13 **CONCLUSION**

14 Permitting Ms. Peirson to testify telephonically at the hearing allows the Division to present  
15 relevant witness evidence that is expected to be reliable and probative, is fundamentally fair, and does  
16 not compromise Respondents' due process rights. Therefore, the Division respectfully requests that  
17 its motion for leave to present the telephonic testimony of Ms. Peirson be granted.

18  
19 JANET NAPOLITANO  
20 Attorney General  
21 Consumer Protection & Advocacy Section

22 BY: 

23 MARK DINELL  
24 Special Assistant Attorney General  
25 MOIRA A. MCCARTHY  
26 Assistant Attorney General  
Attorneys for the Securities Division of  
The Arizona Corporation Commission

1 ORIGINAL AND TEN (10) COPIES of the foregoing  
2 filed this 14th day of September, 2001, with:

3 Docket Control  
4 Arizona Corporation Commission  
5 1200 West Washington  
6 Phoenix, AZ 85007

7 COPY of the foregoing mailed this  
8 14th day of September, 2001 to:

9 Ivy L. Kushner  
10 4295. N. 75<sup>th</sup> St.  
11 Scottsdale, AZ 85251

12 David P. French  
13 2102 E. Sharon Dr.  
14 Phoenix, Arizona 85022

15 James E. Cross  
16 OSBORN MALEDON  
17 P.O. Box 36379  
18 Phoenix, AZ 85067-6379  
19  
20  
21  
22  
23  
24  
25  
26